IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5922 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI @ MAHINBHAI BABARBHAI SAILOR

Versus

COMMISSIONER OF POLICE

Appearance:

MR DEVANG T SHAH for Petitioner

Mr.A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

Heard learned Advocate Devang T. Shah for the petitioner and learned A.G.P. Mr. A.J. Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 24-5-1999 passed by the Commissioner of Police, Surat (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at Annexure "C" inter alia indicate that a prohibition case vide CR no.325/99 was registered against the petitioner -detenu on 21-3-1999 at Prohibition Station , West Division and Indianmade foreign liquor has been seized from the possession of the petitioner-detenu. The matter is pending investigation.

2.1 The grounds of detention further indicate that two witnesses have given statements dated 9-5-1999 and 10-5-1999 regarding bootlegging activities of the petititioner-detenu and have related the alleged incidents dated 5-4-1999 and 23-4-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the petitioner was released on bail on 21-3-1999, the day on which offence was registered against him, however, before passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy like opposing and/or claiming cancellation of bail as available under Sec.437(5) of the Cr.P.C., and as such the impugned order suffers from the vice of non application of mind which has vitiated the subjective satisfaction reached by the detaining authority rendering the impugned order invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved

and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the grounds of detention is devoid of any fact in respect to disclosing the status of the petitioner whether he was on bail or in police custody. It does not disclose the fact whether the detaining authority has ever considered that when in April, 1999 further information about the alleged bootlegging activity of the petitioner had come to the knowledge, though the petitioner was on bail whether any attempt was made to claim cancellation of bail before passing the order. In view of the same, I am constrained to hold that the detaining authority having failed to consider the said aspect of claiming cancellation of bail amounts to non application of mind vitiating the subjective satisfaction of the detaining authority and has rendered the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 24-5-1999 passed by the Commissioner of Police, Surat (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Mahendrabhai alias Mahinbhai Babarbhai Sailor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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